Supreme Court, U.S.
FILED
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No. 98-1837

IN THE
SUPREME COURT OF THE UNITED STATES

STEFAN DIETTRICH,
Petitioner,

v.

NORTHWEST AIRLINES, INC.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION

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REASONS FOR DENYING THE WRIT

I. This case does not present the question of whether the district court had inherent power to deny respondent's Rule 50 motion based on respondent's reply brief footnote concerning the jury interview because, as the district court just confirmed on remand, the district court did not in fact deny the motion on that basis.

Petitioner alleged that the district court denied respondent's motion for judgment as a matter of law due to respondent's counsel's alleged misconduct. Instead, as explained in respondent's brief in opposition to the Petition, the district court denied respondent's Rule 50 motion solely because it found the jury had sufficient evidence from which to infer age discrimination. The district court has just confirmed this fact in an order it issued on September 2, 1999. Respondent's Supplemental Appendix A at A-2.

The Seventh Circuit, after deciding this case in favor of respondent on February 16, 1999, had returned the action to the district court for reconsideration of whether the respondent's counsel's alleged misconduct warranted any form of sanction. On September 2, 1999, the district court considered the question and concluded that further discipline was unnecessary. In reaching this conclusion, the district court addressed whether it had chosen to deny respondent's motion as a punishment for respondent's counsel's actions and stated that it had not:

> The court, however, chose to deny Northwest's motion on the merits, rather than as punishment for Northwest's transgressions. Respondent's Supplemental Appendix A at A-2

The district court's decision on remand confirms that the district court did not dismiss the Rule 50 motion as a sanction. Therefore, no issue of national significance exists in this case concerning a district court's inherent power to deny a Rule 50 motion for judgment as a matter of law due to the movant's alleged misconduct.

CONCLUSION

For these reasons, the reasons stated in respondent's brief in opposition to the Petition and the reasons stated by the court of appeals, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

[Filed: September 2, 1999]

Civil Action No. 94-C-1066

STEFAN DIETTRICH,
Plaintiff,

v.

NORTHWEST AIRLINES, INC.,
Defendant.

ORDER
CLOSING THE FILE FOR THIS ACTION

I. INTRODUCTION

This action was remanded to this court for further proceedings after a decision on appeal by the Seventh Circuit. While the Seventh Circuit resolved the merits of plaintiffs' claims, it returned the action to this court for reconsideration of whether certain inappropriate conduct by defense counsel during the post-trial motion process warranted any form of sanction. The Seventh Circuit issued its decision on February 16, 1999, and the case file was returned to this court on May 11, 1999. After reconsidering the matter, this court concludes that further discipline of the offending attorneys is unnecessary.

II. DISCUSSION

Plaintiff Stefan Diettrich ("Diettrich"), worked as an account manager for defendant Northwest Airlines, Inc. ("Northwest"). In the summer of 1992, Northwest reorganized its sales office and required all account managers to reapply for their jobs. Diettrich scored the lowest of all the applicants interviewed and he was not offered a job. On June 5, 1996, a jury found that Northwest had discriminated against Diettrich. On January 21, 1997, the court awarded Diettrich $7,311.23 in damages. Northwest then moved for judgment as a matter of law, for a new trial, and for a reduction in damages.

Defense counsel's inappropriate conduct occurred during the consideration of post-trial motions. During trial, Northwest moved for permission to speak with jurors for educational purposes after the verdict. The court granted that request. Northwest then included information obtained in those juror interviews in their reply brief supporting their post-trial motions. In its decision on those motions, the court found that "Northwest's reliance on its contact with jurors was improper and, by itself, justifies denying the motion for judgment as a matter of law. " (June 18, 1997 Dec. and Order at 3.) The court, however, chose to deny Northwest's motion on the merits, rather than as punishment for Northwest's transgressions. The court found that Diettrich had submitted enough evidence for a reasonable jury to find discrimination.

Northwest appealed the denial of its motion for judgment as a matter of law. The Seventh Circuit reversed this court's decision denying Northwest's motion for judgment as a matter of law. However, the Seventh Circuit also discussed Northwest's unauthorized use of the juror interview material. That court commented: "The conduct of Northwest's lawyer's was clearly out of bounds. . . . The district court appropriately chastised Northwest for its highly improper behavior. " Diettrich v. Northwest Airlines, Inc., 168 F.3d 961, 964 (7th Cir. 1999). The appeals court ordered that a copy of its opinion be forwarded to the Wisconsin Board of Attorneys Professional Responsibility. The Seventh Circuit also

stated that this court "may wish to reconsider its evaluation of the proper course of action [regarding the conduct of Northwest's attorneys] in light of our decision that Northwest is entitled to judgment as a matter of law." Id. at 965.

The court has reevaluated the conduct of Northwest's attorneys and concludes that no further action is necessary. The reprimands those attorneys received from this court and the Seventh Circuit should adequately deter a reoccurrence of this behavior in the future. Any further disciplinary action is appropriately left to the Wisconsin Board of Attorneys Professional Responsibility. The court will close the file for this action.

IV. CONCLUSION

Upon further review in light of the court of appeals' decision in this matter, the court concludes that no further action is necessary regarding improper conduct of counsel for defendant Northwest Airlines, Inc.

As no further proceedings are necessary in this action, the file for this action shall be **CLOSED**.

SO ORDERED this 2nd day of September, 1999.

/s/_____

John W. Reynolds
United States District Judge